

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
May 23, 2013

Meeting called to order at 6:03 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell

Members absent: Rich Balano

Staff: Gerry Mylroie, Planner; Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes:

April 25, 2013

Ms. Grinnell moved to approve as submitted

Ms. Tuveson seconded

Motion carried unanimously by all members present

May 9, 2013

Mr. Melanson moved to approve the minutes as amended

Ms. Driscoll seconded

Motion carried unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

George Dow, 1 Bartlett Road, [wished to speak on items on the agenda] No Comment.

PUBLIC HEARING

ITEM 1 – Pepperrell Cove Town Landing Improvements. Action: Review Shorefront Development Plan, grant or deny plan approval. Town of Kittery is proposing to construct, renovate and maintain tie-up facilities with features for transient boaters. Improvements will be funded by a federal Boating Infrastructure Grant the Town received. Property is located at Bellamy Lane off Pepperrell Road, Tax Map 27 Lot 49-A, and in the Kittery Point Village base zone and Shoreland and Commercial Fisheries/Maritime Activities Overlay Zones. Agent is Barney Baker PE, Baker Design Consultants.\

Mr. Mylroie summarized the Board's review process on this item. If the Board believes there are upland impacts, the Board would review the application, however, if the Board concurs there are no upland impacts, the Port Authority review and approval is the local approval required.

Barney Baker summarized the Boating Infrastructure Grant (BIG) and proposed improvements. He noted this grant helps preserve the working waterfront as well as provide transient boat facilities. The grant total is \$230,000 with \$90,000 provided by the Town. He noted similar grants have been used in Portland, Harpswell and Camden by boaters traveling the coast as well as for commercial fishing. He explained a marina implies boats that remain for a long periods of time, including repairs and storage, which will not occur at this location. A BIG project does not allow boats to remain longer than 10 days. Transient boat owners do not bring cars with them, often bringing bicycles to visit the area. He introduced Mary Ann Conroy and Peter Walsh from the Public Works Department, Harbormaster Mike Blake, Kelly Philbrook, Kittery Port Authority and Milton Hall, former Chair of the Port Authority.

[Slide presentation followed]

Summary:

1. Pump-out, power and water services included in new design;
2. Harbormaster boat slip; six transient moorings and dinghy spaces;

3. Facility will allow commercial fishermen to prepare for the season prior to the busy summer sailing season;
4. ADA gangway that can be lifted and stored during off-season;
5. ROW along Pepperrell Road for utility services (water, communications, power); overhead then underground to Harbormaster facility and dock;
6. Addition of a fire hydrant;
7. New underground septic tank for pump-out in addition to existing tank for public toilets.
8. Lighting at top and bottom of gangway are down-cast to avoid light pollution;

Permit applications to ACOE, DEP, and Submerged Lands have been submitted. It is anticipated that bids would be received during the summer with construction in the fall and completion in spring, 2014.

Ms. Driscoll: Size of new septic tank; size of average boat tanks.

Response: 2,000 gallons; average size is 20-30 gallons.

Mr. Alesse: Will there be a fuel facility?

Response: No. Most long distance boaters have a large fuel tank, but would have to fuel elsewhere

Ms. Driscoll: Are there plans to increase bathroom facilities or add showers/laundry facilities?

Response: No.

Mr. Emerson stated the Board needs to determine whether this project requires Board review and a public hearing due to significant upland impact.

Ms. Grinnell stated she believes there is upland impact due to the fact that boats can stay up to 10 days and the comments that visitors will arrive with bikes, economic boost to community. Those things happen on the upland.

Ms. Tuveson asked how the Boards review of upland impact extends to visitors.

Ms. Grinnell suggested people will have cars meeting the boats and an increase in vehicular traffic. She also asked why the KPA reviewed the project prior to the Planning Board.

Mr. Mylroie stated if the Planning Department believes there is upland impacts, it is forwarded to the Planning Board. In this case, it was forwarded to the Port Authority so the plan could be completed to meet KPA requirements and then it is determined whether the plan needs Planning Board review.

Mr. Melanson read the ordinance regarding review authority: *If Planning Board review is not required the Town Planner in consultation with the Code Enforcement Officer will review the application for land use compliance with this Code and issue a written record of findings and forward the application to the Port Authority for processing.* Following conversations with the Planner in March, the KPA reviewed the application in April and held a public hearing and approved the project, and returned to the Planning Board for final determination, per the Planner's request.

Mr. DiMatteo explained the KPA reviews for conformance prior to Planning Board approval if required.

Mr. Mylroie stated this is an application to the Planning Department from the Port Authority following their review. The Board requested this be brought to them and it is now before them to determine whether they believe there is upland development requiring their review or action.

Mr. Emerson suggested without KPA review prior to Board review there would be significant time lost regarding whether a project complies with waterfront development. If there were condos attached, the picture would be fairly clear. He asked what the situation is with overnight parking now.

Mike Blake, Harbormaster, stated there is no overnight parking unless at Harbormaster's discretion, for instance, if there is a breakdown. Of the parking spaces the only one-hour spaces are facing the water. There is all day parking facing the restaurant and the resident parking area. He pointed out the parking spaces on the plan, totaling 32 parking spaces.

Ms. Grinnell noted her concerns with parking impacts in residential areas, such as Chauncy Creek and now here. She wants visitors to be accommodated, and wants to know how this will be accomplished.

Mr. Baker explained transient boaters use the cruising guide which outlines the availability of services at a site, such as parking. People will stop at this facility due to poor weather conditions, at night, or between other stops. He would be surprised if people stay longer than 2-3 days, for people to get their bearings prior to moving on. Those that do stop would likely return by car to further their visit to Kittery.

Ms. Tuveson moved the Planning Board finds no significant upland impact with this proposed project.

Mr. Melanson seconded

Ms. Tuveson asked if there is a conflict with Mr. Melanson, as Chairman of the Port Authority, with seconding the motion.

Mr. Melanson stated if there is a conflict, then would there be a conflict with his ability to vote on the motion? He stated he is carrying the interests of the Port Authority and the Planning Board and in compliance with the ordinance to the best of his ability, and does not believe there is a conflict. He leaves this to the Board.

Ms. Tuveson withdrew her motion.

Mr. Alesse moved that the Board finds there is no significant upland impact.

Ms. Tuveson seconded

Ms. Grinnell stated she does not believe Mr. Melanson can vote on a project twice.

Mr. Melanson requested to recuse himself from voting.

Ms. Driscoll moved to accept Mr. Melanson's request.

Ms. Grinnell seconded

Motion carried unanimously by all members present

[Prior motion discussion]:

Ms. Driscoll noted her concerns about the holding tank, parking and storage area.

Ms. Tuveson asked what the upland impact would be of the tanks.

Ms. Driscoll stated the odor when pumping out.

Mr. Alesse asked about the financial impact or revenues from this proposed facility.

Mr. Melanson explained the revenue projects would increase from \$120,000 to \$170,000 per season, including a combination of the slip rentals and the pump out fees. A business plan is under development. The KPA members represent sea captains, and business owners which are well qualified to managed the financial obligations and activities of the proposed project. The Council has indicated they want to have the Port Authority establish a 'pay-as-you-go' operation so the tax payers are not funding the Authority. This project is part of that kind of activity.

Ms. Grinnell stated she fears there is not enough space for the attraction this will cause.

Mr. Melanson stated the projections show there will be a 50% increase in the summer season, which is not significant for Kittery.

Mr. Baker stated there will be 6 spaces at the dock, larger boats will take up more of the spaces, and 6 mooring spaces. He suggested the 1-hour parking spaces would service 12 cars through the day. An analogy would be: at any one time, there would be a maximum of 6 boats (cars) at the dock and 6 boats (cars) in the mooring field, representing a small increase. A pump-out truck would service both tanks at the same time, so the number of trips will not increase.

Mr. Emerson stated he has experience with transient boating and does not believe parking would be an issue. If it does increase, however, the one-hour parking could be increased. The existing use could create the same parking issues but this has not occurred. The pump-out issue occurs now and the increased tank doesn't appear to be creating a bigger impact.

Ms. Driscoll stated a contractor bid \$80,000 to do the utility work, and the Town is matching the grant amount with \$90,000 which is taxpayer money.

Mr. Melanson explained the Council has entered into a memorandum of understanding with the Port Authority whereby the money would be repaid through boat excise taxes and increased revenue. The revenue projection is \$50,000, creating a \$5,000 budget surplus, which will go toward the Town's contribution.

Ms. Driscoll asked if the budget includes additional employees to manage the facility. Will this pier impact the fishermen?

Mr. Melanson stated the budget includes two part-time individuals this year and additional employees next year. Both piers are accessible to commercial fishermen and the public.

Harbormaster Blake explained the problem with the Frisbee hoist was due to too many dinghies. This was a management problem and has been resolved.

Mr. Melanson concurred with Mr. Baker's analogy regarding upland impact, and does not believe the impact will be substantial.

Milton Hall stated they are missing the regulations as to what constitutes a marina: *A business establishment that has compliant frontage on navigable water and that provides, as its principal use, for hire moorings or docking facilities for boats and yachts or any pier and float system capable of supplying four (4) or more 15' or greater slip spaces.*

Mr. Emerson stated this is not a business entity, but a Town facility. This project is not providing repair services, storage, boat and tackle sales, etc.

Milton Hall stated he does not agree, and noted the Kittery Point Yacht Yard requires 62 parking spots in the summer, and this is no different. He explained the definition of marina was not included in the ordinance but is in the KPA Rules and Regulations.

Mr. Emerson stated the Board needs to determine if there is upland development requiring their review, not to debate the definition of a marina.

Vote:

3 in favor; 2 abstentions (Driscoll/Grinnell) [Melanson, recused]

Motion fails

Ms. Grinnell moved to accept the application for the BIG project

Mr. Alesse seconded

Motion carries with 5 in favor [Melanson, recused]

The Board concurred to open the advertised public hearing on this item

Public Hearing opened at 7:31 p.m.

Milton Hall stated at the April 2012 KPA meeting, Chairman Carson stated if they wished to change the use of the pier to a marina, all rules and regulations would have to be followed. In 1988 the Frisbee Family had the town in court for parking by the wharf. The conveyance is conditional only and that the 'conveyance is only for public usage'. How do you separate this from a business? Could the Town lose the pier by doing this?

Mr. Melanson stated Counsel advised the KPA that the proposal is expanding public use, as transient boaters are the public, and did not view this as a concern. This is not a business and does not meet the definition of a marina, noting no slips are rented on a seasonal basis.

Mr. Hall noted the Guyon case that went to court where it was determined the slips were considered part of a marina.

Ms. Tuveson noted the reverse is not automatically true.

Mr. Emerson stated the Board must act on whether this project creates an upland impact.

Mr. Hall stated the reason you stay away of the term marina is because the entire field becomes part of the whole. There's an 80 foot ramp, needing storage. Parking for employees, repair trucks for boats, and the 10-day allowance are issues that concern him.

Harbormaster Blake noted he is not afraid of a court process. He stated there will be 6 new moorings installed in the outer perimeter of Pepperrell Cove, and in discussions with boat owners using Kittery's moorings, he has found that Kittery is not a destination, but a stopover. There is infrastructure on the Pepperrell Pier that needs to be replaced. The project was begun by the previous Harbormaster, and those who have inherited it and worked on it have attempted to design it to be manageable, with the smallest impact to the Town. The Town has the opportunity to improve the waterfront and create better access to the waterfront. This project will allow commercial and public use. There is parking available for a fee should parking become an issue.

Public Hearing closed at 7:41 p.m.

Ms. Grinnell asked if the DPW is involved with this grant.

Mary Ann Conroy, DPW, stated they are administering the grant and installing the utilities.

Ms. Grinnell agreed that the paid parking is available. She felt the process for review is flawed.

Ms. Driscoll stated when Capt. Simeons was in business the parking lot across the street was full, and is concerned that seats were added to the current restaurant without an increase in parking and she is concerned with people parking on private property.

Mr. Emerson stated there are enforcement methods.

Ms. Tuveson noted this is a water dependent and boating community. There is no restaurant at this dock. She appreciates the efforts of the Harbormaster and others, and feels this is a good project for the Town.

Mr. DiMatteo suggested the Board either must review as a site plan and waive any parking requirements, or reconsider their prior vote regarding upland impact.

Ms. Tuveson moved the Board reconsider their prior motion that this project does not have a significant upland impact.

Mr. Alesse seconded

There was no discussion

4 in favor; 1 abstention (Driscoll) [Melanson, recused]

Ms. Tuveson moved the Board finds this project has no significant upland impact.

Ms. Grinnell seconded

Ms. Grinnell noted her concerns have been stated previously.

4 in favor; 1 abstention (Driscoll) [Melanson, recused]

Break

Ms. Tuveson was excused from the meeting.

Mr. Emerson requested moving review to Item 6.

ITEM 2 – Town Code Amendment – 16.10.9.2 Field Changes and 16.10.9.3 Modifications to an Approved Plan, Title 16, Land Use Development Code. Discuss what changes may be required to meet the goals determined by the Board.

This item was deferred.

ITEM 3 – Town Code Amendment – Right-Of –Way Plan Review Application, Title 16, Land Use Development Code. Discuss what changes may be required to meet the goals determined by the Board.

A discussion on the town allowance for Right-Of-Way Plan Review and Approval and if modifications to the Code are warranted in order to support planned growth and development goals stated in the Comprehensive Plan.

This item was deferred.

ITEM 4 – Town Code Amendment – 12.04 Excavations, Title 12, Streets, Sidewalks and Public Spaces. Review amendment and determine to make a recommendation to Town Council. Amend Section 12.04.020 Issuance and record of permits to include the Town Planner along with the Commissioner of Public Works authorized to grant permits for driveway cuts.

This item was deferred.

ITEM 5–Town Code Amendment – Miscellaneous corrections, Title 16, Land Use Development Code. Review amendment and consider adding to other code amendments pending public hearing. Correct Section 16.8.10.9.L.4 to include the word “title” rather than “Code” regarding the removal of Real Estate Signs.

This is a grammatical error that needs to be corrected, and could be bundled with other similar corrections.

Ms. Driscoll moved to correct Section 16.8.10.9.L.4 to include the word “title” rather than “Code” regarding the removal of Real Estate Signs and schedule a public hearing at an appropriate time.

Mr. Melanson seconded

Motion carried unanimously by all members present.

ITEM 6–Residential-Rural (R-RL) and Residential-Rural Conservation (R-RC) Zone Standards, Title 16 Land Use Development Code Amendments. Discuss recent Workshop held May 15. In an effort to execute policy recommendations in Kittery’s Comprehensive Plan, the Comprehensive Plan Update Committee is recommending that the Town Code be amended to reflect the existing Comp Plan policy on density for the R-RL and R-RLC zones. The proposal is to amend the current density from 1 dwelling unit per 40,000 S.F. (R-RL) and 80,000 S.F. (R-RLC) to 1 dwelling unit per 3 acres. Members from the Comp Plan Update Committee and the Kittery Open Space Committee have been invited to attend.

Mr. Emerson referenced an email from Vern Gardner regarding limiting building permits rather than changing the dwelling units per acre. He does not believe there is a consensus for limitations in sewered areas of town. Historically 20-30 permits per year for single family homes are issued. If there is a disincentive to limiting building in non-sewered areas, there should be incentives to build in serviced areas.

Ms. Grinnell stated she understood limiting building permits was an avenue to ‘buy time’ so a closer review of the ordinance can be done.

Discussion followed regarding how to identify areas of limitation and singling out areas of limitation may not be legal; demographics and age-related development; involvement of the Open Space Advisory Committee; comprehensive plan objectives; quality of life; identifying conservation/greenbelt areas of town for preservation; pending subdivision applications before the Board and possible phasing build-out; can a time period of ownership be required prior to subdivision development.

Mr. Mylroie will investigate York and Wells building permit limits.

[Unfinished Business]

Ms. Driscoll moved to schedule a public hearing for the Landgarten shoreland development project at 578 Haley Road, Map 26 Lot 36.

Mr. Melanson seconded

Motion carried unanimously

A site walk was scheduled for Thursday, May 30 at 5:00 p.m.

ITEM 7 –Board Member Items / Discussion

A. Review the Board’s punch list, update and establish priorities;
Not discussed

Mr. Emerson:

- Sustain Southern Maine – Kittery Foreside meeting. Kickoff for quality improvement overlay, report is forthcoming. More parking could be achieved around JP Jones Park with bump-outs and striping. Potential for historic markers in the area – what is the Planning Board’s role if any? Ms. Driscoll suggested design standards should be established. Mr. Mylroie stated historic markers could be placed in numerous areas and standards will be presented.
- Mr. Emerson will be recusing himself in a forthcoming meeting as a project representative.
- Portsmouth is discussing form-based zoning. Mr. Emerson will attend.
- Highpoint Circle – The Board needs to determine what to do with this. Mr. Mylroie stated this should be done at staff level to mediate.

Mr. Melanson:

- Title 11 changes need to be scheduled for a Planning Board public hearing.

Mr. Mylroie:

- Specialty Food and Beverage ordinance inclusion is scheduled before the Council on June 10.
- Outdoor seating also going to Council. This was the same as the prior year, with only the dates changed.

- Applicant request to amend the ordinance regarding contiguous non-conforming lots. This will be brought to the Board for consideration at a forthcoming meeting.

Ms. Driscoll:

- Site walk minutes (Estes) remain to be reviewed.

B. Review the By-Law changes suggested by Councilor Dennett;
Not discussed

C. Discuss information learned at a recent workshop on municipal planning boards; and
Not discussed

D. Other

ITEM 8 –Town Planner Items:

A. Status of existing items listed on the Board's punch list; Not Discussed

B. Discuss next steps Quality Improvement Plan providing flexibility in some commercial zones; Not discussed.

C. Extend Title 5 Chapter 10 Use of the Public Way to the Commercial C-3 Zone and expand outdoor seating to Yard Setback areas, how to proceed; Not discussed

D. Other

- June 5, 2013 – Joint workshop with the Port Authority, Planning Board and Comp Plan Update Committee for the shore and harbor areas in Kittery.

Mr. Melanson moved to adjourn

Ms. Grinnell seconded

Motion carried unanimously by all members present

The Kittery Planning Board meeting of May 23, 2013 adjourned at 9:00 p.m.

Submitted by Jan Fisk, Recorder – May 30, 2013